

**RULES
OF
DEPARTMENT OF REVENUE
MISCELLANEOUS TAX DIVISION**

**CHAPTER 1320-4-5
BUSINESS TAX RULES AND REGULATIONS**

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1320-4-5-.01 ACCOMMODATION SALES AND OTHER SIMILAR TRANSACTIONS.

- (1) The term "accommodation sales" means occasional and incidental sales for resale by persons regularly engaged in the business of making sales of the type of property so sold to other persons similarly engaged in the business of selling such property, provided the following condition is met: The amount paid by the buyer to the seller does not exceed the amount paid by the seller to his vendor in the acquisition of the article, but to which may be added the cost of freight, in storage cost, and transportation cost incurred in the transfer from the seller to the buyer. Receipts from a bona fide accommodation sale shall not be deemed to be taxable under the Business Tax Act and may be deducted from the gross sales in determining the tax base, provided such sales have been included in the gross sales reported on the Business Tax Return.

(Rule 1320-4-5-.01, continued)

- (2) Where a person transfers property to another for resale on a memorandum basis, and in turn receives property in kind for the property transferred, there is deemed to be no sale and no Business Tax payable on the transaction.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.02 BROKERS.

- (1) A person who acts as a broker or an agent for another in making sales of tangible personal property or services without maintaining a stock of merchandise or taking title to any such property and who receives a commission or fee for his service is performing a taxable service and, with the exception of a food broker, is taxable under classification 3 at the retail service rate on his total commissions and fees. A food broker is taxable under classification 1 also on his commissions and fees.
- (2) A person who makes sales of tangible personal property or services without acquiring possession thereof, but who acquires title thereto, is a wholesaler or retailer, and is liable for the Business Tax as a vendor.
- (3) A person, who, as a part of his normal business activities, buys and sells intangible personal property or real property is not liable for the business tax on receipts from such sales.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.03 BUSINESS TAX-NATURE AND APPLICATION. The Business Tax is a privilege tax imposed upon persons engaged in various businesses and activities in the state. If a dealer invoices the business tax as a separate item and passes it on to his customer, then the tax shall be added to the gross receipts and be used in determining the tax base for both Business Tax and Sales and Use Tax purposes.

Authority: T.C.A. §§67-1-102, 67-4-702, 67-4-703, 67-4-704 and 67-4-705. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-4-5-.04 REPEALED.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Repeal filed June 28, 2000; effective September 11, 2000.

1320-4-5-.05 CASUAL AND ISOLATED SALES.

- (1) The Business Tax does not apply to casual and isolated sales by persons who are not engaged in the business of selling tangible personal property or furnishing any of the services subject to the Business Tax. Likewise, the tax does not apply to sales of tangible personal property or services not normally sold by a wholesaler or retailer and which, if property, has been used by the dealer prior to the sale. These exemptions, however, do not apply to any sales of tangible personal property or taxable services bought for resale by those persons who hold themselves out as engaged in business, notwithstanding the fact that the sales may be few and infrequent.
- (2) Manufacturers, processors, wholesalers, or jobbers engaged in the business of distributing tangible personal property or furnishing services subject to the Business Tax are not deemed to be making casual and isolated sales when they sell such tangible personal property or services to purchasers for use or consumption, notwithstanding the fact that such sales may comprise a small fraction of their total business. (See 1320-4-5-.16(1)(c) and 1320-4-5-.29(3).)
- (3) Persons regularly engaged in the recurring sale of tangible personal property at antique malls, flea markets, craft shows, antique shows, gun shows and auto shows and antique malls, flea markets, crafts shows, antique shows, gun shows and auto shows regularly engaged in the recurring sale of tangible

(Rule 1320-4-5-.05, continued)

personal property shall not be considered to be making casual and isolated sales. It shall be the burden of such persons and businesses to prove that their sales are actually casual and isolated in order to qualify for the exemption.

Authority: T.C.A. §§67-5822 and 67-101. *Administrative History:* Original rule certified June 7, 1974. Amendment filed October 11, 1983; effective January 16, 1984.

1320-4-5-.06 CEMETERIES AND MEMORIAL GARDENS. Income derived from interment charges made by cemeteries, memorial gardens, etc., is taxable under the Business Tax Act. In cases where no deed or certificate of ownership is given, charges for burial in lots, crypts, etc., will be deemed to be charges made for the right of sepulcher and the entire gross income therefrom is taxable without any deduction for amounts set aside for perpetual care. The sale of boxes, urns, markers, vases, plants, shrubs and other tangible personal property are also taxable under the Business Tax Act.

Authority: T.C.A. §§67-5822 and 67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5-.07 COMMISSION AGENTS AND FACTORS.

- (1) Persons operating as a commission agent or as a factor, such as an oil company bulk station or any other type of business that does billing in the name of the supplier they represent while using their own employees or agents and their own equipment and supplies in operating their business, shall use the gross commissions received by them as a basis for computing their Business Tax liability. Such persons shall obtain a separate license in their own name even though the principal they represent may have obtained a license for reporting sales made by the commission agent or factor.
- (2) Persons operating as a commission agent or as a factor but who make sales in their own right, e.g., as a jobber, or in a similar capacity, are taxable as sellers.

Authority: T.C.A. §§67-5822 and 67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5-.08 COMPUTATION OF TAX.

- (1) "Sales Price" means the total amount for which tangible personal property is sold or the amount charged for any of the things or services taxable under the Business Tax Law, including any services required to process the property or taxable services for sale, and without any deductions therefrom on account of the cost of the property or taxable services sold, the cost of materials used, losses, or any other expenses whatsoever, except cash discounts allowed on sales. It does not include finance charges, carrying charges, time price differential, or interest from credit extended on sales of tangible personal property under installment sales contracts, conditional sale contracts, or other contracts providing for deferred payments of the purchase price, if the amount of such finance charges, carrying charges, time price differential, or interest is in addition to the usual or established cash selling price, and provided that it is:
 - (a) Segregated on the taxpayer's invoice or bill of sale, or
 - (b) Billed separately to customers.
- (2) The Business Tax is computed upon the sales price of items subject to the tax and is based upon the actual consideration passing, or agreed to be passed, between the purchaser and the vendor, less any deductions allowed by law, but without any deduction for actual or possible bad debts. Wholesalers and retailers making charge sales must report the Business Tax due on such sales for the period in which the sale is made, regardless of when or whether any collection is made for such charges.

Authority: T.C.A. §§67-5822 and 67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5-.09 CONSTRUCTION CONTRACTORS AND EXTERMINATORS.

- (1) Contractors, as defined at T.C.A. §67-4-708, classification 4, shall be liable for the business tax regardless of whether the contract is on a lump sum or cost-plus basis.
- (2) A contractor shall pay tax under Classification 4 of the Business Tax Act upon all receipts without any deductions except as specifically provided. Tax is due upon all progress payment charges billed pursuant to the contract and received by the contractor, and any charges for renting or leasing equipment to others for use in constructing, or making improvements or additions, or repairing buildings or other structures on real property when the equipment is operated by the lessor. Additionally, tax is due at the end of the contract period on the difference between the progress payment charges as billed and the payments received by the contractor. Amounts actually paid during the business tax period to subcontractors or other persons for the services enumerated in T.C.A. §67-4-711(a)(5) may be deducted provided the contractor adequately identifies such persons by supplying the local collecting officers with the names and addresses of the subcontractors or other persons and of the amounts subcontracted or charged.
- (3)
 - (a) A contractor shall be liable for the minimum tax and business tax on receipts as provided for in this rule in each county and/or municipality in which he receives \$50,000 or more in contracts during any taxable period. A contractor is liable for the minimum tax in the county and/or municipality in which his business is located and will pay business tax on his gross receipts derived in all locations, less any amounts reported to counties and/or municipalities in which his contracts total or exceed \$50,000, during any taxable period. "Receipts" used herein mean taxable receipts.
 - (b) The contractor shall be liable for the minimum tax on September 30 in those jurisdictions where his principal place of business is located. In other counties and/or municipalities, the minimum tax is due on the date when charges billed exceed \$50,000 and gross receipts tax reports shall be filed in such jurisdiction as of the next following September 30.
- (4) Sales of tangible personal property and services to a contractor who in the course of performing his contract installs the property as a component part of an addition or improvement to or repair of real property are sales to a user and a consumer, and such sales are taxable at the appropriate retail rate unless the sales are exempt by specific provisions of the Business Tax Act and rules and regulations construing the Act.
- (5) If a contract is performed within the jurisdiction of more than one (1) governmental entity, any business tax on receipts due shall be paid to each such governmental entity proportionately based upon the amount of work actually performed within each governmental entity.

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-708 and 67-4-711. **Administrative History:** Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978. Amendment filed June 3, 1980; effective September 29, 1980. Amendment filed March 18, 1983; effective June 15, 1983. Amendment filed June 14, 1988; effective September 28, 1988.

1320-4-5-.10 CONTAINERS, WRAPPING AND PACKAGING-MATERIALS AND RELATED PRODUCTS.

- (1) Persons making sales of nonreturnable containers or wrapping and packaging materials to retailers for use in containing property sold at retail or for use in connection with services rendered at retail are making retail sales of such property.
- (2) Persons making sales of returnable containers or wrappings and packaging materials to either retailers or to anyone else for use in connections with sales of tangible personal property or services are making retail sales of such property.

(Rule 1320-4-5-.10, continued)

- (3) Persons making sales of paper napkins, toilet tissue, drinking straws, wooden spoons and other items of a similar nature, to a purchaser who uses such items in connection with the conduct of his business, and not for resale, are making retail sales of such property.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.11 CREDITS ALLOWABLE (MINIMUM TAX AND PERSONAL PROPERTY TAXES).

- (1) The minimum tax actually paid may be taken as a credit against business tax due during the same period.
- (2) In order for personal property taxes to be taken as a credit on a business tax return, the personal property taxes for which credit is sought must have been paid during the tax period covered by the return on which credit is claimed. Credits for personal property taxes cannot be used to pay the minimum business tax for the next taxable period. The minimum tax is due and payable on the dates set out at T.C.A. §67-4-714 (c) regardless of the amount of any credits.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed August 28, 1974; effective September 27, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-4-5-.12 DEDUCTIONS FROM GROSS SALES.

- (1) Amounts representing the following transactions may be deducted from gross sales, prior to computing tax liability, provided such amounts have been included in the gross sales reported on the Business Tax Returns:
 - (a) Cash discounts allowed and taken by customers on sales. (See 1320-4-5-.04)
 - (b) Returned merchandise or allowances or credits given to customers for specific sales. (See 1320-4-5-.45.)
 - (c) Trade-ins. (See 1320-4-5-.54.)
 - (d) Repossession to the extent allowed. (See 1320-4-5-.44.)
 - (e) Contractor payments to subcontractors. (See 1320-4-5-.09(2).)
 - (f) Sales in bona fide interstate commerce. (See 1320-4-5-.33(2).)
 - (g) Receipts for services rendered by nonprofit institutions and financial institutions and for accounting, insurance, and other services, all as provided for by law. (See 1320-4-5-.16 and 1320-4-5-.32.)
 - (h) Accommodation and casual and isolated sales. (See 1320-4-5-.01 and 1320-4-5-.05.)
 - (i) Any other deductions authorized by the Business Tax Act or by rules and regulations pertaining thereto.
- (2) Except as indicated in paragraph (1) of this rule, and as may otherwise be allowed by law, no other amounts attributable to any other transactions, including bad debts, may be deducted from gross sales.
- (3) Any person claiming deductions from his gross sales must maintain sufficient invoices and other documents to substantiate his claims; otherwise, the deduction will not be allowed.

(Rule 1320-4-5-.12, continued)

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978.

1320-4-5-.13 DEFINITIONS-GENERAL. As used in these Rules and Regulations, the following terms, wherever used, shall have the following meanings:

- (1) "Act" shall mean the Business Tax Act, being part 7, Chapter 4, Title 67, T.C.A., as amended.
- (2) "Commissioner" shall mean the Commissioner of Revenue of the State of Tennessee, or any of his duty authorized assistants.
- (3) "Department" shall mean the Department of Revenue of the State of Tennessee.
- (4) "Local Collecting Officers" shall mean County Court Clerks and the duly designated municipal officers responsible for collecting the retail business tax imposed by local governments.
- (5) "Lease or Rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title of such property, and such shall be considered as a taxable transaction within the meaning of the Business Tax Act.
- (6) "Return" shall mean the report of a person liable for the Business Tax showing gross sales, deductions, credits, tax computations, and such other information as may be required on the forms prescribed by the Commissioner of the departments of Insurance and Banking and Revenue and by local collection officers.
- (7) "State" shall mean the State of Tennessee.
- (8) "Tax" shall mean the Business Tax imposed by the Business Tax Act.
- (9) "Manufacturer" shall mean those persons engaged in the businesses described in Division D. of the Standard Industrial Classification Index of 1967.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-4-5-.14 DISTRIBUTION FROM OWN WAREHOUSE OR OTHER CENTRAL LOCATION.

- (1) Sales of tangible personal property and services by a licensed wholesaler or retailer from a central warehouse or other distribution point other than his principal place of business shall be subject to the appropriate wholesale or retail tax, and persons making such sales shall be liable for the minimum tax for that location.
- (2) Where a person merely stores property in a warehouse or other place for eventual delivery to one or more places of business operated by him from which sales are made, he shall not be deemed to be making sales at that location as contemplated by this Rule and Regulation.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.15 DOMINANT BUSINESS ACTIVITY DEFINED FOR CLASSIFICATION PURPOSES. For purposes of the Business Tax both wholesale and retail businesses are classified according to their dominant business activity. The item comprising the largest proportion of gross sales of the business when compared with other items sold determines its classification. A business may be taxed at both retail and wholesale rates but only one classification (of Classifications 1, 2, 3 or 4) shall apply. Once the classification is determined, the gross sales of the business or the proportionate part of the receipts applicable to both wholesale and retail sales, if liability exists

(Rule 1320-4-5-.15, continued)

under both types of business, are taxed at the rate specified by such classification. The fact that sales may be made at both wholesale and retail shall have no effect in determining the dominant business activity.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.16 EXCLUSIONS.

- (1) Generally, the receipts attributable to the following transactions, unless otherwise prohibited in the Business Tax Act, may be excluded in reporting gross sales on the Business Tax Returns:
 - (a) Consumer taxes such as those passed on to the purchaser under the provisions of the Sales and Use Tax Law (Chapter 6, Title 67, T.C.A.) and the Liquor by the Drink Law (Chapter 1, Title 57, T.C.A.).
 - (b) Receipts derived from medical and allied health services to human beings, except services of persons engaged in the business of making dentures and artificial teeth; religious, charitable, legal, educational, domestic, accounting services, architecture, engineering, surveying, and veterinary services; services rendered by non-profit membership organizations for the promotion of the interest of the members; educational and research agencies; public utilities as defined by T.C.A., §65-4-10; banks, building and loan associations, mortgage bankers, and other similar organizations; insurance companies and holding companies; operators of residential and non-residential buildings other than hotels, motels, or rooming houses; persons operating camps and trailer parks where charges are made for rental only of real property are exempt from the tax, but persons renting trailers to transients, or selling tangible personal property, or making separate charges for specific services furnished are not exempt; lessors of agricultural, forestry, mining, oil, public utility and airport properties.
 - (c) Receipts from sales of tangible personal property which is either manufactured by or, if not manufactured by, is incidental to the primary operation of a manufacturer who is subject to the ad valorem tax imposed under Chapter 5 of Title 67, T.C.A., and is sold either at the manufacturing location or any other manufacturing location operated by it within the same county.
 - (d) Receipts of the producer from sales of livestock, poultry and other farm products directly from the farm, including catfish farmers.
 - (e) The cost of sales of livestock; poultry or other farm products, other than those excluded as sales directly from the farm by the producer, to the end result that the Business Tax imposed shall apply only to the amount of all commissions, fees, margins or other charges received from such sales.
 - (f) Receipts of persons which are subject to gross receipts tax for their engaging in the business of operating as bottlers and manufacturers of soft drinks and soft drinks substitutes; gas, water, and electric current companies; telephone and telegraph companies; theaters, motion picture and vaudeville shows; establishments selling mixed drinks or setups for mixed drinks; and vendors of tangible personal property through vending machines, all of which persons are liable for or elect to pay the gross receipts tax to the state under the provisions of Chapter 4 parts 4 and 5, Title 67, T.C.A.
 - (g) Receipts of owners, or others having similar interests, from the sale or rental of real property; but this exclusion shall not include the receipts of brokers or agents as commissions' for the sale or rental thereof.
 - (h) Receipts from rental of films to theaters which pay the tax imposed by T.C.A. §67-6-212.

(Rule 1320-4-5-.16, continued)

- (i) Receipts from rental of films, transcriptions and recordings to radio or television stations operating under a certificate from the Federal Communications Commission.
- (2) Any other amounts attributable to the exclusions authorized by the Business Tax Act, or rules and regulations pertaining thereto, may also be excluded. (See Rule 1320-4-5-.36)

Authority: §§67-1-102, 67-4-703, and 67-6-212. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983. Amendment filed March 17, 1987; effective June 29, 1987.

1320-4-5-.17 FOOD. Food is defined to include all material which is used for animal as well as for human consumption to sustain physical growth, repair tissues, maintain vital processes and to furnish energy.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.18 FREIGHT AND DELIVERY CHARGES. Freight, delivery, or other like transportation charges are subject to the Business Tax if title to the property being transported passes to the vendee at the destination point. Where title to the property being transported passes to the vendee at the point of origin, the freight or other transportation charges are not subject to the Tax. It is immaterial whether the vendor or vendee actually pays for any charges made for transportation, whether the charges are actually paid by one for the other, or whether a credit or allowance is made or given for such charges. In cases where a vendor makes a separate charge for delivering tangible personal property in his own vehicle, or makes arrangements for delivering tangible personal property other than by a common carrier, the delivery charges shall be considered a part of the selling price subject to the Tax.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.19 FUNERAL DIRECTORS.

- (1) Persons engaged in business as a funeral director shall be liable for the Business Tax as determined by the manner in which they indicate the billing to their customers.
 - (a) In the case of a "unit price," (such as where there is one stated price for the casket, burial vault, and all services furnished) the transaction shall be regarded as a sale of tangible personal property and taxed under Classification 2 of the Business Tax Act.
 - (b) In the case of a "functional price," or "itemization," (such as where there is a segregation of the price of the casket, burial vault and other tangible personal property sold and charges for services rendered) the tax rate shall be determined by the classification comprising the dominant business activity, either Classification 2 or Classification 3.
- (2) In cases where a funeral director makes "cash advances" for opening graves, transportation, newspaper notices, telephone calls and other similar services, and furnishes items such as flowers and clothing, acting as an agent for his customer and making a charge for reimbursement for the advances without adding any profit to the charges for himself, such charges shall be included in the gross sales of the funeral director but may be deducted on the Business Tax Return in computing the Business Tax due and payable.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.20 HOSPITALS, CONVALESCENT, AND REST HOMES, ETC. Hospitals and persons rendering allied health services to human beings, including convalescent and rest home care, are rendering services, and are the users and consumers of products sold to them. Sales to the State, or other governmental agencies, and institutions exempt from paying Sales and Use Tax under the provisions of T.C.A. §67-6-322, are deemed to be wholesale sales. Sales to all other institutions, etc., not otherwise exempt from sales and use tax under T.C.A. §67-6-322, are deemed to be retail sales.

(Rule 1320-4-5-.20, continued)

Authority: T.C.A. §§67-1-102, 67-4-702 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-4-5-.21 INSTALLATION SALES.

- (1) Tangible personal property which is sold and attached to real property, but which is ordinarily removed by the owner or tenant, such as window air conditioning units, curtain and drapery rods, gasoline pumps, etc., shall be deemed to be personal property. Charges for installing tangible personal property as a part of and in connection with the sale of tangible personal property are subject to the business tax if the property continues to be personal property after installation. The tax is due from the person making the sale of personal property regardless of whether the property is installed by that person or by another person acting for him. The tax shall be computed based on the dominant business activity of the person making the sale of the personal property. Persons making charges for installing personal property not as a part of and in connection with the sale of the tangible personal property shall be taxed under classification four (4) of the business tax.
- (2) Charges made for installing tangible personal property which becomes a part of real property, and which is not ordinarily removed by the owner or tenant, such as carpeting, electrical wiring, etc., shall be deemed to be made by a contractor, and the person installing such property shall pay the appropriate Business Tax as a contractor.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974. Amendment: filed May 18, 1978, effective August 14, 1978.

1320-4-5-.22 INSTALLMENT AND CREDIT SALES. Persons making conditional, charge, or installment sales must report the total selling price of such sales and pay the appropriate Business Tax due thereon in the reporting period in which the contracts of sale are entered into.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.23 LAY-AWAY SALES. Lay-away, lay-by, and/or will-call sales shall be included in the Business Tax base for the taxable period in which the delivery is made. Where the property is returned to inventory because of nonpayment for the merchandise and any previously made payments are forfeited because the sale is not completed, the amount forfeited shall be included in the Business Tax base at that time.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.24 LEASE OR RENTAL.

- (1) Leases and rentals of tangible personal property are deemed sales of tangible personal property and subject to the Business Tax. When real property and tangible personal property are leased or rented, that portion of the charges made for or properly attributable to lease or rental of tangible personal property shall be considered as sales subject to the Business Tax. The tax shall apply to all leases of tangible personal property delivered to a lessee or rentee in this state, regardless of where the property may be taken or used, whether within or without the state, and the tax will apply to whatever charges are made.
- (2) Persons engaged in the business of leasing or renting tangible personal property to users or consumers are taxable as retailers and persons leasing or renting tangible personal property to persons who in turn will lease or rent the property to others are taxable as wholesalers.

Authority: T.C.A. §§67-5822 and Section 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.25 LEASED DEPARTMENTS. Persons operating leased departments or concessionaires are not permitted to include their tax liability on the returns of the lessor or grantor of the concession but must file separate returns and pay applicable taxes imposed by the Business Tax Law, including the initial and minimum license fees.

Authority: T.C.A. §§67-5822 and 67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5-.26 LIVESTOCK, POULTRY, AND OTHER FARM PRODUCTS. "Livestock, poultry and other farm products," as used in Classification 4 of the Business Tax Act, shall mean those in the same or raw form as that delivered by a farmer without any form of processing or manufacturing whatsoever having been made upon the products.

Authority: T.C.A. §§67-5822 and 67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5-.27 LOCAL ADOPTION OF BUSINESS TAX.

- (1) Affirmative action must be taken by county or municipal governments in order to implement the business tax in their respective jurisdictions. The business tax may only be levied by passage of a resolution or ordinance by the appropriate governing body.
- (2) Upon adoption or amendment of the business tax by any county or municipal government, a certified copy of the resolution or ordinance adopting or amending the business tax must be furnished to the department of revenue.
- (3) County or municipal governments may impose the same or lesser tax rates than those imposed by the Business Tax Act for any or all classifications in the Business Tax Act.
 - (a) If lesser rates are imposed by county or municipal governments, the rates adopted must be made applicable to all persons alike in the same classification or category within a classification.
 - (b) The minimum tax of fifteen dollars (\$15) set out at T.C.A. §67-4-709 may not be reduced or deleted by county or municipal governments.
 - (c) Local governments may not reduce the tax rates to zero (0) for any classification or category within a classification.
 - (d) Local governments shall not adopt tax rates which do not apply to all sales or receipts of any person subject to the business tax within each classification or category within a classification
 - (e) Local governments shall not adopt the minimum tax without adopting the same or lesser tax rates as set out in T.C.A. §67-4-709(a)(1),(2),(3) and (4).

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-704 and 67-4-709. *Administrative History:* Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-4-5-.28 LOCATIONS AND OUTLETS-OPERATIONS IN OTHER LOCALITIES-PEDDLERS.

- (1) The Business Tax is applicable to each place, location or outlet in the state from which business is carried on. This means that a business which engages in business activity in several places, in different locations and through different outlets, must pay the minimum tax on each place, location or outlet; and it must report loss sales and tax due for each separate location. The fact that a business has several outlets in a single county or municipality is immaterial. Such business may upon request submit a consolidated report to cover all such outlets in one county or city, however, a breakdown of sales by each outlet must accompany such consolidated report. (See 1320-4-5-.52(2)).
- (2) Subject to the exceptions enumerated hereinafter, persons subject to the Business Tax operating from an established place of business in one county who extend their operations into other counties and/or

(Rule 1320-4-5-.28, continued)

municipalities without establishing an office, headquarters or other place of business therein shall not be subject to the Business Tax in such other counties and/or municipalities. Tax on total receipts from all taxable sales shall be due to the county and municipality, if any, in which the established place of business is located.

- (3) Excepted from the rule as stated in subparagraph (2) are:
 - (a) Persons with no established place of business in this state.
 - (b) Contractors with taxable receipts of \$50,000 and out-of-state contractors.
- (4) Persons who make sales and delivery of merchandise or services concurrently and on the spot to their customers are deemed to be "peddlers."
 - (a) All peddlers, both full-time and part-time, must pay the Business Tax measured by the applicable rate of tax as provided in the Business Tax Act. Full-time peddlers must pay the minimum tax and possess the license as provided for in the Act; part-time peddlers are not required, however, to pay the minimum tax or possess the license as provided for in the Act.
 - (b) A full-time peddler is one who is regularly engaged in business somewhere as a peddler as herein defined. Persons regularly engaged in a seasonal business somewhere are full-time peddlers during the seasonal period.
 - (c) A part-time peddler is one who does not devote his full-time regularly as a peddler. A person does not become a part-time peddler merely because he remains in a county or municipality for a few days and then moves on to a different locality.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.29 MANUFACTURERS AND PROCESSORS.

- (1) Sales of industrial materials and services to manufacturers and processors who further process, manufacture or convert such materials as a component part of articles of tangible personal property, or use the services in preparing such a product for sale or resale, are considered to be sales at wholesale and, therefore, are subject to the Business Tax.
- (2) Sales of machinery and supplies and services, other than those in (1) above to manufacturers or processors, are retail sales, unless the property or services are shown by the manufacturer or processor to be for resale, in which case the sales are wholesale sales subject to the wholesale tax.
- (3) Sales of tangible personal property manufactured or processed by a manufacturer or processor, who is subject to the ad valorem tax under Part 5 of Chapter 5 of Title 67, T.C.A., are exempt from the Business Tax if made at the manufacturing or processing location within this state. Sales of such property which is not manufactured or processed by a manufacturer or processor but which is incidental to the operation of such manufacturer or processor are also exempt from the Business Tax if made at the manufacturing or processing location or outlet that is subject to the ad valorem tax under provisions of said Chapter.
- (4) Sales of tangible personal property manufactured or processed by a manufacturer or processor from locations other than the manufacturing or processing location where the ad valorem tax is paid are subject to the Business Tax. Such sales are taxable at either the retail or wholesale tax rate, whichever is applicable.
- (5) A manufacturer or processor who is subject to ad valorem tax under the provisions of Part 5 of Chapter 5 of Title 67, T.C.A., and who also sells tangible personal property which he has manufactured outside

(Rule 1320-4-5-.29, continued)

the state, or has brought tangible personal property or services for resale, shall be liable for the ad valorem and personal property taxes as follows:

- (a) All property used exclusively in the manufacturing or processing operation shall be subject to the tax imposed by Part 5 of Chapter 5 of Title 67, T.C.A..
- (b) All property used exclusively in the sales of property manufactured by him outside the state, or tangible personal property or services bought for resale, shall be exempt; from the provisions of Part 5 of Chapter 5 of Title 67, T.C.A., and personal property taxes.
- (c) The value of property used partially in connection with manufacturing operations exempt from the Business Tax and partially in connection with sales subject to the Business Tax shall be prorated.

Such proration shall be as determined by the ratio of sales of property manufactured in this state subject to the tax imposed by Part 5 of Chapter 5 of Title 67, T.C.A., and receipts from other sales subject to the Business Tax. The portion of the value applicable to property used in connection with manufacturing operations shall be subject to the ad valorem tax imposed by Part 5 of Chapter 5 of Title 67, T.C.A., and that portion of the value applicable to other sales activities shall be exempt from the provisions of Part 5 of Chapter 5 of Title 67, T.C.A., and personal property taxes.

Authority: T.C.A. §§67-1-102, 67-4-702, 67-4-703, 67-4-704, and Part 5 of Chapter 5, Title 67, T.C.A.
Administrative History: Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-4-5-.30 TAX DUE DATE-DELINQUENCY-TAX PERIODS.

- (1) The minimum tax provided for in §67-4-709 of the T.C.A., is an annual tax for a license to engage in any of the business activities made subject to the Business Tax. The minimum tax paid by a person may be applied to any tax that he may owe, if any, when the return provided for in §67-4-715, T.C.A., is submitted to the appropriate officer.
- (2) The minimum tax for new businesses shall be due 20 days after the date of commencement of business or the opening of each additional outlet. All taxes shall be due as follows:
 - (a) Classification 1 - December 31
 - (b) Classification 2 - March 31
 - (c) Classification 3 - June 30
 - (d) Classification 4 - September 30
 - (e) Classification 5 - December 31
- (3) All persons liable for taxes imposed under the Business Tax Act shall be delinquent in the payment of their tax on the following dates:
 - (a) Classification 1 - March 1
 - (b) Classification 2 - June 1
 - (c) Classification 3 - September 1

(Rule 1320-4-5-.30, continued)

- (d) Classification 4 - December 1
- (e) Classification 5 - March 1
- (4) Persons subject to the tax imposed by the Business Tax Act shall compute and pay their tax liability based on the following tax periods:
 - (a) Classification 1 - January 1 through December 31
 - (b) Classification 2 - April 1 through March 31
 - (c) Classification 3 - July 1 through June 30
 - (d) Classification 4 - October 1 through September 30
 - (e) Classification 5 - January 1 through December 31
- (5) When any person shall either fail to pay the minimum tax or fail to make any return and pay the full amount of tax required by the Business Tax Act, there shall be imposed, in addition to other penalties provided, a specific penalty to be added to the tax in the amount of five percent (5%) of the net amount of tax due for each 30 days or fraction thereof during which the failure continues.
 - (a) The above-mentioned specific penalty shall not exceed twenty-five percent (25%) of the net amount of tax due in the aggregate.
 - (b) The above-mentioned specific penalty shall not be less than five dollars (\$5) on a delinquent return regardless of the amount of tax due.
 - 1. The minimum penalty of five dollars (\$5) shall not, however, apply to the delinquent payment of the minimum tax.
 - 2. The penalty applicable to the delinquent minimum tax shall be computed as in paragraph (5) above.
 - (c) Any local tax collection officer waiving payment of penalty pursuant to T.C.A. §67-4-720(d) must have written documentation attached to any return for which penalty is waived to support such action.
- (6) A fee of \$3.50 may be charged by the County Court Clerks for collecting and recording amounts from the Business Tax; provided, however, that only one fee may be charged persons paying the annual minimum tax and filing annual tax returns if both are paid on the same date. However, a separate fee of \$3.50 may be charged for each license issued a taxpayer who may file a consolidated return.

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-709, 67-4-717, 67-4-719 and 67-4-720. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-4-5-.31 MOTOR VEHICLE, TRAINER, AND/OR SIMILAR RENTALS.

- (1) Persons engaging in the business of motor vehicle and/or trailer rentals, or having contracts with service stations or other business entities to act as their agent for the rental of such equipment to customers, are liable for the Business Tax imposed on rentals in their counties and/or municipalities at each location where such vehicles are maintained and rented, including their own locations as well as those of their agents. Agents operating the service stations or other business locations where such rentals are made are liable for the Business Tax on the commissions they receive for the services performed.

(Rule 1320-4-5-.31, continued)

- (2) Payments by service stations or other businesses in regard to the tax shall be made to the locality where the customers pay for the rental of the equipment.
- (3) Deposits made by customers and which are refundable when a motor vehicle, trailer, and/or similar rentals are left at the destination, and which are actually refunded to the customer, may be deducted from the gross receipts in determining the Business Tax.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.32 NONPROFIT MEMBER ORGANIZATIONS. Organizations operating on a nonprofit membership basis for promotion of interest of the members shall be exempt from the Business Tax on services rendered. The sale of food, beverages or other tangible personal property, shall constitute a taxable activity, and such organizations shall pay tax under the appropriate classification.

Authority: T.C.A. §§67-1-102, 67-4-703 and 67-4-708. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-4-5-.33 NON-RESIDENT PURCHASES.

- (1) Deliveries of tangible personal property and services to customers in the State of Tennessee are sales subject to the Business Tax. It is immaterial that the property may thereafter be transported outside the state.
- (2) Deliveries of tangible personal property or services to customers outside the State of Tennessee by a person subject to the Business Tax or by a common carrier before a customer obtains possession are sales exempt from the Business Tax.

Authority: T.C.A. §§67-1-102, 67-4-703 and 67-4-712. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.34 PATRONAGE DIVIDENDS OF COOPERATIVE ASSOCIATIONS. The amount of cash and other patronage dividends, declared by cooperative selling associations or corporations are paid to or credited to a member's account from the earnings of such association or corporation, may be taken as a deduction from gross sales for the tax period in which the distributions and credits are made.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-4-5-.35 PERSON-DEFINED. The term "person" shall mean any individual, partnership, corporation, receiver, trust, trustee, or any other legal entity engaged in any of the business activities made subject to the business tax by the Business Tax Act. The term "person," however, does not include the United States of America, the State of Tennessee or political subdivisions thereof, or any of the agencies thereof, nor does the term include utility districts organized under the provisions of Chapter 26 of Title 6, T.C.A., or electric membership corporations or cooperatives organized under the provisions of Chapters 24 and 25 of Title 65, T.C.A., to the extent that such political or quasipolitical entity may be the seller or furnisher of the goods or services which would otherwise be taxable under the Business Tax Act.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.36 PERSONS EXEMPT FROM THE BUSINESS TAX.

- (1) Persons making occasional and isolated sales or transactions who do not hold themselves out as engaged in business.
- (2) Persons having a total value of sales of less than \$500.00 per year.
- (3) Certain blind persons. (See §67-4-712, T.C.A.)
- (4) Certain disabled veterans. (See §67-4-712, T.C.A.)
- (5) Newspaper route carriers and newspaper peddlers.
- (6) Farmers making sales of farm products direct from the farm and produced by themselves, including catfish farmers. (See 1320-4-5-.16)
- (7) Persons employed by another who work for wages or salary and who are under the direction and control of the employer in the performance of their duties.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-4-5-.37 PERSONS MAKING WHOLESALE AND RETAIL SALES.

- (1) A person whose business is primarily that of making wholesale sales but who makes more than 20% of his sales at retail is liable for both the wholesale and retail Business Tax at the appropriate rates on each category of such sales. If the person makes 20% or less of his sales at retail, he is liable for the Business Tax at the appropriate wholesale rate on all of his sales, both wholesale and retail. (Either category shall be based on net taxable sales after allowable deductions).
- (2) A person whose business is primarily that of making retail sales but who makes more than 20% of his sales at wholesale is liable for the Business Tax at the appropriate retail rate on the retail sales, and at the appropriate wholesale rate on the wholesale sales. If the person makes 20% or less of his sales at wholesale, he is liable for the Business Tax at the appropriate retail rate on all of his sales, both retail and wholesale.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.38 PUBLIC WAREHOUSING AND STORAGE.

- (1) Persons engaged in the business of warehousing and storage of any tangible personal property belonging to others for a charge or fee are rendering services and are taxable under the Business Tax Act. Gross sales shall include all charges made for such service and shall include charges for crating, boxing, and packaging used in the performance of these services. Receipts from the sale of any tangible personal property made by the warehouseman to satisfy a warehouseman's lien on account of storage or service charges shall likewise be included in gross receipts in establishing the Business Tax base. This Rule applies also to persons operating grain elevators, tobacco warehouses and like facilities where charge is made for services rendered.
- (2) Persons operating a warehouse and, in addition, leasing space within the warehouse without furnishing any services to the lessee of the space may exclude the receipts for such leases from the gross sales subject to the Business Tax, or deduct them from the gross sales if the receipts are included in the gross sales reported on the Business Tax return.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.39 PUBLISHERS OR PRINTERS OF NEWSPAPERS AND OTHER PERIODICALS.

- (1) Persons engaged in the business of publishing or printing newspapers, other periodicals, and other printed matter, shall be deemed to be manufacturers who are subject to ad valorem tax imposed in Chapter 5, Title 67, T.C.A., and shall be exempt from the Business Tax in the same manner as are other manufacturers.
- (2) Publishers or printers of newspapers or other periodicals engaged in any other activity made taxable under the Business Tax Act shall be liable for the appropriate tax on such activity.
- (3) Activities engaged in that are incidental to the manufacturing portion of the business shall not, however, be subject to the tax.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-4-5-.40 RADIO AND TELEVISION STATIONS.

- (1) Persons operating radio and television stations under authority of a certificate from the Federal Communications Commission are not liable for the Business Tax.
- (2) Persons who operate cable television services are subject to the tax.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-4-5-.41 REAL ESTATE SALES AND RENTALS.

- (1) Persons who receive monies or other consideration for the sale or rental of real property belonging to them are not liable for the Business Tax on such sales or rentals.
- (2) Persons receiving or entitled to receive commissions, fees, service charges, or other income, credits or property value in money for services rendered concerning the sale or rental of real or personal property belonging to others are liable for the Business Tax on such receipts.
- (3) The employing unit, whether designated as a real estate firm, broker, agency, partnership, or corporation which owns or conducts a real estate business, but not the employees thereof, is liable for both the minimum and gross receipts tax. The tax shall be paid on the total receipts (as enumerated in paragraph (b) above) which are due and payable. It is immaterial, as regards tax liability, whether the total receipts are divided between the employing unit and the employee, salesman, or other representative of the employing unit or whether the division is made by the employing unit or by the owner, purchaser or other party in interest. In any event the tax is payable on the total amount of receipts due and payable for services rendered.
- (4) The minimum and gross receipts taxes are due and payable to each county and municipality, if any, where the employing unit maintains an office or place of business. The location of the property involved in the sale or rental or the place where a contract for the sale or rental of the property is entered into shall not be considered in determining what county and municipality may impose the Business Tax.
- (5) Where receipts, as enumerated herein, are divided, or split, between bona fide real estate agents or brokers, as distinguished from a division between an agent or broker and one of his employees, that portion of the receipts retained or received by each business shall become a part of its gross receipts subject to the Business Tax.

(Rule 1320-4-5-.41, continued)

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.42 RECORDS - PRESERVATION OF.

- (1) Every person liable for the Business Tax shall keep and preserve sufficient and complete records for a period of at least three years to determine the amount of Business Tax for which he may be liable. It is advisable, however, that such records be kept and preserved for a period of six years. Such records shall include and show the following:
 - (a) A daily record of all cash and credit sales, including sales under any type of financing or installment plan in use;
 - (b) A record of the amount of all merchandise purchased, including all bills of lading, invoices, and copies of purchase orders;
 - (c) A record of all exclusions, deductions and exemptions allowed by law and/or claimed in filing Business Tax Returns;
 - (d) A true and complete inventory of the value of the stock on hand taken at least once yearly. All of the records required to be kept and preserved shall be open for examination at any time by the commissioner or local collecting officers, or their duly authorized representatives.
- (2) If an assessment has been made and an appeal therefrom has been made to the Commissioner, to a local collecting officer, or to a court, all books and records, as above specified, relating to the period covered by such proposed assessment, must be preserved until the final disposition of the appeal.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.43 REPAIR SERVICES. The total charges made by those engaged in the business of repairing tangible personal property, including parts, labor, and any other charges, shall be deemed to be service charges and taxable at either the wholesale rate or retail rate, whichever is applicable.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.44 REPOSSESSIONS.

- (1) Except as otherwise provided in this rule, a wholesaler or retailer may not deduct the unpaid amounts on repossessed tangible personal property from their gross proceeds of sales in submitting their reports.
- (2) In cases where a wholesaler or retailer sells any article of personal property on a security agreement, or any other instrument whereby he retains title to the property, and he repossesses or enforces his lien against the said property and there is an unpaid principal balance of more than five hundred dollars (\$500) the dealer may deduct, in reporting his gross receipts, an amount equal to the unpaid balance minus five hundred dollars (\$500). The unpaid balance to be considered in this calculation is only that amount which constitutes principal, and shall not include interest, carrying charges or any similar charges. Any wholesaler or retailer claiming such a deduction or deductions shall preserve, as a part of the official records of his business, full information concerning the sale and subsequent repossession of the subject item of personal property; and such information shall include identification of parties and items involved, the dates of the sale and repossession, the amount of the original price to the purchaser upon which the Business Tax was due to be paid, and the amount of unpaid balance which forms the basis for the deduction.
- (3) A bank or other financial institution purchasing contracts without recourse from wholesalers or retailers relating to tangible personal property which was sold by the latter under a security agreement

(Rule 1320-4-5-.44, continued)

or other title-retained instrument may not claim any deduction or credit for any unpaid balances remaining due on any such contracts following repossessing of the property or any other action to enforce the lien.

Authority: T.C.A. §§67-5822 and 67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5-.45 RETURNED MERCHANDISE AND ALLOWANCES. In the event a person subject to the Business Tax gives credit to a customer for tangible personal property voluntarily returned to him or gives a credit or allowance to a customer as an adjustment or otherwise with respect to a specific sale, whether or not the property is returned, the amount of credit or allowance actually given or credited to the customer's account may be deducted from the gross sales subject to the Business Tax.

Authority: T.C.A. §§67-5822 and Section 67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5.46 SALES BY OUT-OF-STATE VENDOR. Sales of tangible personal property or services made by a Tennessee dealer to an out-of state vendor who directs that the dealer act as his agent to deliver or ship such property or services to his customer in Tennessee shall be deemed to be a sale by the Tennessee vendor and subject to the Business Tax.

Authority: T.C.A. §§67-5822 and 67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5-.47 SALES FOR RESALE.

- (1) Sales for resale include those whereby a supplier of materials, supplies, equipment and services makes such tangible personal property or services available for further processing as a component part of a product to legitimate dealers engaged in and actually reselling or leasing such property or services to a user or consumer. Sales to a manufacturer or processor for future processing, manufacture or conversion into articles of tangible personal property for resale where such industrial materials become a component part of the finished product are likewise considered sales for resale.
- (2) Sales of tangible personal property and services to a licensed retailer who may make further distributions from a central warehouse or other distribution point to others for resale shall be deemed to be wholesale sales, and the licensed retailer shall be liable for wholesale tax on any such distributions if receipts from such exceed 20% of his total sales.
- (3) Sales made by a wholesaler to another wholesaler shall be deemed wholesale sales and taxable at the appropriate tax rate. Wholesale sales shall not include the transfer of tangible personal property from a wholesaler to another wholesaler where the amount paid by the transferee to the transferor does not exceed the transferor's cost including freight in and storage cost and transportation costs incurred in the transfer from the transferor to the transferee.
- (4) The price charged by the vendor for tangible personal property or services or the quality of such property or services is immaterial in determining whether or not a sale is one for resale. The controlling factor is what the vendee does with his purchase.
- (5) Sales to a contractor who in the course of performing his contract installs property or uses services in a structure, as a component part thereof, are retail sales to a user or consumer, and are taxable at the appropriate retail rate.

Authority: T.C.A. §§67-5822 and 67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5-.48 SALES OF SERVICES AND TANGIBLE PERSONAL PROPERTY.

- (1) A person exempt under the provisions of T.C.A. §67-4-708, classification 3, from paying the tax on receipts from services rendered is, nevertheless, liable for the tax on receipts from sales of tangible personal property.
- (2) A person engaged in the business of selling tangible personal property is liable for the Business Tax even though he may call his business a service.

Authority: T.C.A. §§67-1-102, 67-4-703, and 67-4-708. **Administrative History:** Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987. Amendment filed June 28, 2000; effective September 11, 2000.

1320-4-5-.49 SALES TO EMPLOYEES. Sales to employees shall be included in the Business Tax base. The tax shall be based upon sales price of the property or service sold, or upon the cost price of property or service furnished to the employee as part of his compensation without a specific charge being made for such property or service furnished.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.50 SALES TO USERS EXEMPT FROM PAYING OTHER TAXES. Sales of tangible personal property to the State of Tennessee or any county or municipality or subdivision thereof, or the sale to any religious, educational or charitable institution as defined in §67-3014, T.C.A., shall be deemed to be wholesale sales and taxable at the appropriate wholesale taxable rate. Such sales made to the Federal Government shall likewise be deemed to be wholesale sales.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.51 SPECULATIVE BUILDERS.

- (1) Persons building houses or other structures on their own property from their own plans and not under contract and offering them for sale are not considered to be selling tangible personal property or rendering a taxable service and are not taxable under the Business Tax Act.
- (2) If, during the course of construction of a house or other structure a builder agrees to sell the property and alters the plans to the specifications of the buyer, he shall be deemed to be a contractor and liable for the appropriate business tax on the total receipts over and above the price for which the property would otherwise be sold.
- (3) A builder is subject to the provisions of paragraph (2) if:
 - (a) He contracts to sell a building and lot prior to completion of the construction of the building and,
 - (b) He alters the building plans to the specifications of the buyer.

Both of the conditions in subparagraphs (a) and (b) must be present in order for builder to be subject to the provisions of paragraph (2).

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-4-5-.52 REPEALED

Authority: T.C.A. §67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983. Repeal filed June 28, 2000; effective September 11, 2000.

1320-4-5-.53 TAXPAYERS' RETURNS AND RECORDS.

- (1) All persons liable for the Business Tax shall make complete reports of all sales and other business receipts and list any deductions which they are entitled to make for each separate place, location, or outlet in the State, and submit them on their Business Tax returns to the appropriate collection officer, as provided for in the Business Tax Act and the Rules and Regulations relating thereto. Sales and receipts which are excludable, as provided for in the Act and these Rules and Regulations, shall not be included in the gross sales reported; but allowable deductions shall be included in the gross sales reported and listed as a deduction on the Business Tax Return and so treated in computing and paying the Business Tax due.
- (2) Persons with two or more business locations in a city and/or county may, upon request, obtain forms and file with the appropriate collection officer consolidated tax returns, provided only, however, that such businesses are taxable under the same classification and at the same tax rate. Consolidated returns must contain a schedule, by individual locations, giving information necessary to determine tax liability at each location.
- (3) All Business Tax returns, audits of all taxpayers, information provided the Department by municipalities and/or counties and information provided the counties and/or municipalities by the Department of Revenue for the administration, enforcement, and/or collection of the Business Tax are confidential and the contents shall not be revealed to any person except as follows:
 - (a) To the taxpayer personally, or
 - (b) To an attorney or other agent duly authorized by the taxpayer in such a manner as the Commissioner may require, or
 - (c) To employees of the Department and duly authorized officials of counties and municipalities for the purpose of checking, comparing and correcting returns, or
 - (d) To any collection, regulatory, or inspection agency of this State, the United States, or another State; provided, that before such information may be divulged to the United States or another State, such government unit shall agree to furnish this State with such information as it may deem necessary to enforce the Tennessee tax laws. or
 - (e) In accordance with proper judicial order, or as otherwise required by law.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978.

1320-4-5-.54 TRADE-INS.

- (1) When an item of tangible personal property is taken in trade as a credit or part payment on the sale of new or used articles, the Business Tax shall be computed on the difference between the sales price of the new or used article sold and any credit actually given for the used article accepted in the trade.
- (2) A credit will not be allowed for trade-ins unless the item so traded is of a like kind and character of that which is purchased and indicated as a trade-in by model and serial number, where applicable, on an invoice given to the customer.

(Rule 1320-4-5-.54, continued)

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.55 TRADING STAMPS.

- (1) Persons engaged in the business of redeeming trading stamps which have been given by other dealers shall be deemed to be a dealer and shall be liable for the Business Tax on the retail value of the merchandise given for the stamps. This value shall be deemed to be the value which is assigned to the book of stamps.
- (2) The sale of trading stamps to concerns who give them to customers in exchange for purchases in their stores is not taxable under the Business Tax Act.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.56 TRAILER PARKS OR CAMPS. Persons operating trailer parks or camps where charges are made only for rental of real property are exempt from the business tax, but persons renting trailers to transients for occupancy at the trailer park location for a period of 90 days or less, or selling tangible personal property, or making separate charges for specific services furnished are liable for the business tax under the appropriate classification. (See 1320-4-5-.16.)

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.57 TRANSFER OF LICENSE.

- (1) Except as otherwise provided in paragraph (2), the license, required pursuant to T.C.A. §67-4-723, may neither be transferred from one person to another person nor from one business location to another business location.
- (2) A business may be transferred from one location in a municipality to another location within the same municipality one time during any tax year if the licensee notifies the local collecting officer at least five (5) days prior to the last day of business at the old location and pays to such local collecting officer three dollars and fifty cents (\$3.50) for a recording fee.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-4-5-.58 TRANSPORTATION COMPANIES. Persons other than carriers or other public utilities as defined in Section 65-401, T.C.A., engaged in the business of furnishing transportation services or carrying or hauling passengers or personal property for a consideration, are liable for the Business Tax based upon all intrastate receipts. Each station, terminal or other central location shall be considered as a separate place of business.

Authority: T.C.A. §§67-1-102 and 67-4-703. **Administrative History:** Original rule certified June 7, 1974.

1320-4-5-.59 VENDING MACHINES

- (1) All persons making sales of tangible personal property through coin-operated vending machines and electing to pay the Gross Receipts Tax imposed in Item 65(c)(1), T.C.A. §67-4-503, shall pay such tax in lieu of the Business Tax. If a person who is otherwise engaged in business and pays Business Tax on all taxable receipts and, as an incident thereto, sells merchandise through his own or leased vending machine and does not elect to pay the Gross Receipts Tax under said §67-4-503, he is not liable for the per-machine privilege tax imposed in §67-4-503, but shall be required to include receipts from such machine in the base for his Business Tax

(Rule 1320-4-5-.59, continued)

- (2) If a vending machine operator sells tangible personal property by any means other than through vending machines, or makes charges for servicing coin-operated machines other than those he owns, he is subject to, and must pay, the appropriate Business Tax applicable to such other activities.

Authority: T.C.A. §§67-1-102 and 67-4-703. *Administrative History:* Original rule certified June 7, 1974.

1320-4-5-.60 YEARLY, MONTHLY, OR QUARTERLY PAYMENTS TO DEPARTMENT OF REVENUE BY LOCAL COLLECTORS.

- (1)
 - (a) It is provided in T.C.A., §8-21-701(57), that each local collector of each county and or municipality from and after June 1, 1972 shall be required to pay the Commissioner 15% of the total amount collected under the provisions of the Business Tax Act, Part 7, Chapter 4, Title 67, T.C.A. This provision shall apply to all collections, except fees charged by the clerks for collecting and recording amounts from the business tax as provided in §8-21-301(57).
 - (b) The statute also provides that such payments shall be made to the Commissioner on May 31, 1973 for collections from June 1, 1972 through May 31, 1973 and each May 31 thereafter for the previous period of June 1 through May 31. Such payments must be made within 20 days after the due date or they shall be considered delinquent and subject to penalty and interest.
 - (c) For the convenience of the local collecting officers, the Department of Revenue may accept payments on a monthly or quarterly basis during a taxable period with a final adjustment being made covering the full taxable period by the due date of May 31 each year. Any local collectors desiring to make payments to the Commissioner in any manner other than on an annual basis shall first seek written authority to do so from the Commissioner and if such is granted, the frequency of payments may not be changed during a tax year without written request from the local collector and authorization from the Commissioner.
- (2) Section 8-2115, subsection (A)(40), provides that for receiving and paying over all taxes, fines, forfeitures, fees and amercements county court clerks shall be entitled to 5% of the amount collected and paid over. This commission may not be deducted from the amount due the Department of Revenue as set out in (a) above (15% of business tax collections). The 5% commission may be deducted from total business tax collections before payments of such are made to the proper county official, but any amount that would otherwise relate to the 15% fees due the state would be borne by the county and not charged to the Department of Revenue. The net effect is that the County Court Clerk is entitled to 5% of the adjusted gross collections, and the state is entitled to 15% of the adjusted gross collections.
- (3) Local collecting officers shall accept all remittances made in payment of tax liability. Any partial payments of tax liability shall be collected and reported to the Commissioner of Revenue on the report covering the reporting period in which such sums are received by the local collecting officer. In addition, fifteen percent (15%) of any such partial payments shall be paid to the Commissioner by the local collecting officer on the due date for the period in which such sums were collected. Any such sums not collected, reported, or paid over to the Commissioner shall be considered to be late payments subject to the provisions of T.C.A., §§67-5824(c) and 67-5826. The local collecting officers shall bill any person liable for the tax for any portion of the tax liability which is deficient, plus additional penalty and interest on the deficient amount.

Authority: T.C.A. §§67-5822 and 67-101. **Administrative History:** Original rule certified June 7, 1974. Amendment filed August 28, 1974; effective September 27, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-4-5-.61 ANTIQUE MALLS, FLEA MARKETS, CRAFT SHOWS, ANTIQUE SHOWS, GUN SHOWS AND AUTO SHOWS

- (1) Promotions conducted by non-profit organizations shall refer to cases where the promoter is a non-profit association, corporation, or organization, and shall not depend on whether or not the individual booth owner or renter is a non-profit entity. However, individual booth owners or renters who are non-profit entities shall be exempt from the tax.
- (2) A booth shall be any area or space for which a promoter charges a separate fee.
- (3) Fifteen (15) percent of all fees submitted to the local tax officials by a promoter shall be paid by the local tax officials to the Commissioner of Revenue.

Authority: T.C.A. §67-5822. **Administrative History:** Original rule filed October 11, 1983; effective January 16, 1984.